

REMARKS

Applicants authorize the Examiner to cancel non-elected claims 16-19 without prejudice to place elected claims 1-15 in condition for Allowance. Although not required, a clean listing of claims is presented in this response to facilitate the Examiner's consideration.

Applicants acknowledge with appreciation that the Examiner favorably reconsidered and withdrew the objection to the drawing, approved of the further drawing, approved the amended specification and claims, and the withdrew the Section 103(a) rejection over Yamamori et al. (U.S. 5,922,201) and Watari et al. (U.S. 2002/01487755).

Enclosures herewith: Terminal Disclaimer, translation of JP Appln. No. 2003-370498 (as published by the JPO), and Declaration.

Rejection under 35 U.S.C. §103(a)

Applicants respectfully traverse and request reconsideration of the rejection of claims 1-15 under 35 U.S.C. §103(a) as being unpatentable over Sueyoshi et al (WO 2004/028672), which is an intervening reference, see English language equivalent USP 7,294,267, and in view of Watari (US 2002/0148775).

Applicants respectfully solicit favorable reconsideration and withdrawal of the obviousness rejection because the references cannot be combined. Indeed, the primary reference is not prior art. Sueyoshi et al. (WO 2004/028672) was published *after* Applicants' priority date, and is therefore not prior art. The USP '724 English language counterpart to Sueyoshi (WO 2004/028672) is not prior art inasmuch as, upon present information, the present application and the inventions therein were assigned to the same assignee as listed for the USP '724. According to 35 U.S.C. 103(c)(1):

(c)(1) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Therefore, Applicants courteously submit the obviousness rejection can be withdrawn since the primary reference is not prior art, and the secondary reference alone is an inadequate basis for rejecting the claims under 35 U.S.C. 103(a).

Applicants respectfully solicit reconsideration and withdrawal of the common law obviousness-type double patenting rejection of their claims 1-3 and 6 over claims 1, 4-6 and 13-14 of commonly

assigned U.S. Patent No. 7,491,329. Without conceding anything, but simply to expedite prosecution to an allowance, Applicants enclose herewith a terminal disclaimer. ***Applicants hereby authorize the PTO to charge the terminal disclaimer fee to our deposit account 06-1135 regarding our order number 7412-88137.***

For at least the above reasons, Applicants courteously submit their inventions are not obvious over the cited references, and withdrawal of the outstanding rejections is respectfully requested. There being no other issues, it is respectfully submitted that the present application is in condition for allowance, and prompt passage to issue is respectfully requested. However, if the Examiner still has questions, he is cordially invited to telephone the undersigned in an effort to successfully conclude prosecution.

Applicants request a one month extension of time. Applicants additionally request any required extension of time not otherwise requested and hereby authorize the Commissioner to charge any omitted fee required to effect entry of this Amendment, including application processing, extension, extra claims, statutory disclaimer, issue, and publication fees, to Deposit Account No. 06-1135 with reference to Order No. 7412-88137.

Respectfully submitted,
FITCH, EVEN, TABIN & FLANNERY

BY:

/Kendrw H. Colton/

Kendrew H. Colton, #30,368
202-419-7000 (telephone)
202-419-7007 (telecopier)

Customer No. 42798
One Lafayette Centre
1120 - 20th Street, NW
Suite 750, South
Washington, DC 20036